

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 272 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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TEJAJI NATHAJI THAKOR

Versus

STATE OF GUJARAT  
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Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR AJ DESAI AGP for Respondent No. 1, 2 & 3  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Heard Ms.Subhadra Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 3-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that the petitioner is alleged to have been involved in 14 criminal case registered at Sola Police Station in between 19-11-1998 to 23-3-99. In all the cases, the offence stated to be made punishable under Section 379 read with Section 114 of IPC and car tapes are alleged to have been stolen. That out of all said 14 cases, 8 cases are pending for trial in the court while remaining 6 cases are pending for further investigation.

#. Over and above, that two witnesses, on assurance of their anonymity have given their statement dated 1-5-99 against the petitioner regarding the anti social activities of the petitioner narrating alleged incidents dated 9-3-99 and 13-3-1999 respectively. That on the basis of the said material, the respondent No.2 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and as such, the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner was arrested in all the cases registered against him on 15-3-1999 and since then he was in judicial custody. That the detaining authority has failed to enumerate any facts showing the necessity to detain the petitioner on account of his antecedent history and as such, the detention order being invalid on account of non application of mind deserves to be struck down.

#. That in the matter of RAMESHWAR SHAW VS. DISTRICT MAGISTRATE, BURDWAN reported vide AIR 1964 page 334, the Constitution Bench of the Hon'ble Supreme Court has elaborated the proposition of law to the extent that

passing of the detention order when the person is in custody per se does not invalidate the detention order. However, if the detaining authority has cogent and convincing material and has made apparent in the grounds of detention that on account of background of the detenu proximate in time to the date of judicial custody, the detention order could be passed even against the person who is in custody.

#. That in the instant case, on scrutiny of grounds of detention and accompanied documents suggest that prior to 15-3-1999, no anti social activities or antecedent involving the petitioner in anti social activities as dangerous person has been enumerated. That the detaining authority has also not given any reasons to suggest that the petitioner is likely to be released on bail and thereafter, having got himself released on bail, is likely to continue his anti social activities. Thus, except bald statement of the detaining authority, the grounds of detention is devoid of any material to disclose the rational connection between the conclusion drawn by way of the subjective satisfaction by the detaining authority and alleged facts constituting the backgrounds tendency and antecedent of the petitioner as dangerous person.

#. In view of above stated discussion, the detention order having become invalid on account of the said non application of mind, cannot be sustained and deserves to be struck down.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 3-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - TEJAJI NATHAJI THAKOR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 22-2-2000 [A.K.Trivedi, J.]

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